IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10268 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI MAFATLAL PATEL

Versus

DEPUTY COLLECTOR

Appearance:

MR HS MULIA for MR RC JANI for Petitioner

MR HM BHAGAT for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/07/2000

ORAL JUDGEMENT

#. Rule. The learned counsel for the respondents waives service of Rule on behalf of respondents. Heard the learned counsel for the parties. Affidavit-in-reply is filed today in the court, copy of which has been given to the learned counsel for the petitioner. The learned

counsel for the petitioner does not desire to file rejoinder to the reply. As the matter is complete, it is taken up for final hearing today.

#. Challenge has been made to the orders passed by the Deputy Collector, Stamp Duty Valuation Department, and that of the Chief Controlling Revenue Authority, Gandhinagar, in the matter of property purchased by petitioner in dispute, valuation thereof and the stamp duty to be paid on the document of title.

#. The document for registration was presented under the provisions of the Indian Registration Act on 25th September, 1990, before the Sub Registrar, Wadaj at Ahmedabad, which was registered at No.22022. The respondent No.1 issued notice u/s.32A of the Bombay Stamp Act and called upon the petitioner to show cause as to why the deficit stamp duty of Rs.33,944/= and the penalty of Rs.250/= should not be recovered from him. The respondent No.1 passed the order on 22.2.95 and directed the petitioner to pay the amount aforesaid. The petitioner filed against this order, appeal before respondent No.2 which came to be rejected under the order annexure-B, dated 8.2.98. Hence this special civil application in this court. The land in question has been purchased by petitioner at the rate of Rs.14.20 ps.per sq.mt., i.e. for the total cost of Rs.1,99,700/=. In the notice, it is stated that the document is under valued and the value of the land was taken to be Rs.40/= per sq.mt. and accordingly its value has been arrived at by respondent No.1 of Rs.4,73,480/= and accordingly recovery of deficit stamp duty is made with penalty. This order was challenged in appeal but that has also been dismissed.

#. From the orders of respondents No.1 and 2, I find that in such a serious matter, they are not passing any speaking orders but only blanks are being filled in stereotype order. That is not the order which falls in the category of order made after application of mind. Be that as it may, in the order the Deputy Collector has not given out on what basis he has arrived at this figure of Rs.40/= per sq.mt. taken to be the cost of the land. Similar is the case with the appellate authority. On 21st June, 2000, the learned counsel for the petitioner has given out that this valuation has been made arbitrarily. It is not the real and genuine valuation. For this value nobody is going to buy the property. He has stated before the court that the petitioner is ready to give this land to the State Government at the rate of Rs.35/= per sq.mt. He further states that the petitioner

is ready to give land to the State Government at the rate of Rs.30/= per sq.mt. During the course of arguments today, the learned counsel for the petitioner has given out that he is ready to sell this land to the State Government even at the rate of Rs.28/= per sq.mt. The court has on 21st June 2000 directed the learned counsel for the respondents to take instructions and to file affidavit by an officer not below the rank of Deputy Collector. In the affidavit, I am constrained to observe that concentration has been made only on the aspect which has been raised by the petitioner that the authority has not given opportunity to him. It is not given out in the reply also how the Deputy Collector has determined the cost of the land at Rs.40/- per sq.mt. This has been stated to be arrived at on the basis of Ready Reckoner (Jantri) and on the record of this special civil application that Ready Reckoner (Jantri) is also not produced. So there is nothing produced on the record from the side of respondents to accept what to say to believe the valuation of the property as made by respondents. In the absence of any material produced from the respondents in support of their case as well as nothing has been stated in the reply to the special civil application, this assessment of valuation is nothing but only arbitrary and perverse. More so this is also borne out from the fact that the petitioner is ready to sell this property at the rate of Rs.28/= per sq.mt. to the State Government. This land was purchased by petitioner as per the document, in the year 1993 and after seven years, the petitioner is ready to sell this property to the State at the rate aforesaid which goes to show that the assessment of the value of the property made at the rate of Rs.40/= per sq.mt. is wholly arbitrary and unjustified. The respondent - Deputy Collector, though filed reply to the special civil application, but has not replied to the court's direction. In the absence of any reply to the court's direction it is difficult to believe that what the value of the property assessed is real and genuine. The Deputy Collector has felt contended and satisfied by stating that the State Government does not have power and authority to acquire this property covered by the document on the lines similar to the provisions contained in Chapter 20C of the Income Tax Act, 1961 and the provisions of Section 269UA to 269UC onwards in the said Chapter. It is true that there cannot be any provision in the Act which is under consideration for acquisition of the property. But the very fact that even after seven years, the respondent - State of Gujarat is not ready to purchase this land for Rs.28/= per sq.mt., the assessment has been made of the value of this property at the rate of Rs.40/= per sq.mt. is perverse

and arbitrary. The Deputy Collector has only stated that the court seems to be inclined to direct to consider the offer made by petitioner to give away the land to the State Government even at the rate of Rs.30/= pr sq.mt. The Deputy Collector, either has not been properly instructed or deliberately he made all these averments in the affidavit. The court has given out that prima-facie what the petitioner contends that arbitrary value has been assessed seems to be correct and to fortify this, asked the Government counsel to ascertain what is the real market value of the land. The very fact that it is not denied that what value has been stated by the petitioner is reasonable goes to show that the value of the property is not that much as what the respondent has determined. They go by their Ready Reckoner (Jantri) but not by realities. From the facts of the case, I am satisfied that they arbitrarily assessed the value of the property for the purpose of augmentation of the revenue. They are not taking reality of the things. Jantri is not the document which has to be blindly followed by the courts. A person who has purchased the property in the year 1993 and in case its value would have been Rs.40/= per sq.mt. at that time would not have been agreeable to sell this property for this meagre amount. It depends on the land as well as on the principle of demand and availability of the land. The respondent - Deputy Collector, instead of assisting the court in this respect has felt contended and satisfied by referring to the provisions of the Income Tax Act and stating that no provision for acquisition of land is there in the Bombay Stamp Duty Act. This attitude, approach and way adopted by none other than the Class-I officer of the State of Gujarat is difficult to appreciate. In fact, the Deputy Collector has not made any attempt to effectively assist the court. Valuation of the property as made by the respondent is certainly not the real value of the property but artificial value of the property for the object and purpose of augmenting the revenue.

#. In the result, this special civil application succeeds and the same is allowed and the demand made by respondents for this stamp duty and penalty in the facts of this case cannot be allowed to stand. In view of the fact that the court is satisfied that the determination made of the valuation of the property is arbitrary, other contentions raised by learned counsel for the parties are not referred to and decided. In the result, the orders of the Deputy Collector, Stamp Duty Valuation Department, Ahmedabad, dated 22.2.95, annexure-A, and that of the Chief Controlling Revenue Authority, Government of Gujarat, Ahmedabad, dated 9.2.98, annexure-B, are quashed

and set aside. Rule is made absolute. The respondent-State of Gujarat is directed to pay Rs.2,000/= as costs of this petition to the petitioner. Still, it is open to the respondents to bring a prospective buyer for this land who is willing and ready to purchase the land at the rate of Rs.28/= per sq.mt. and accordingly charge the stamp duty.

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(sunil)